

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 1460 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the Civil Judge?

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NITIN MADICOS PARTNER VIPINBHAI K. SHAH - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR.MRUDUL M BAROT for Applicant(s) : 1,
 MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
 None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/08/2007

ORAL JUDGMENT

1. By way of this petition, under Article 227 of the Constitution of India, the petitioner -

original complainant has prayed for an appropriate Writ or order quashing and setting aside the judgment and order dated 14.02.2007 passed by the learned Sessions Judge, Panchmahals at Godhra in Criminal Criminal Application No. 9 of 2006 in dismissing the same and confirming the order passed by the learned Magistrate accepting 'C' Summary report submitted by the Investigating Officer.

2. The petitioner - original complainant has filed private complaint before the learned Chief Judicial Magistrate, Godhra against respondent No.2 herein being Criminal Inquiry Case No. 64 of 2005 for the offences punishable under Section 406 read with Section 420 of the Indian Penal Code. The said complaint was send to the Incharge Police Officer of Godhra Town Police Station for inquiry under Section 156(3) of the Criminal Procedure Code. That thereafter, the complaint was registered as M.Case No. 18 of 2005 and after investigation and inquiry, the concerned Investigating Officer submitted 'C' Summary report to the learned Chief Judicial Magistrate by observing that the dispute is of civil nature. The learned Chief Judicial Magistrate

accepted the 'C' Summary report. Being aggrieved and dissatisfied with the order passed by the learned Chief Judicial Magistrate, Godhra, the petitioner - original complainant preferred Criminal Revision Application No. 9 of 2006 before the learned Sessions Judge, Panchmahals at Godhra who vide order dated 14.02.2007 has been pleased to dismiss the same and confirm the order passed by the learned Chief Judicial Magistrate, Godhra accepting 'C' Summary report. Being aggrieved and dissatisfied with both the orders, the petitioner - original complainant has preferred the present petition under Article 227 of the Constitution of India.

3. Mr.Barot, learned Advocate appearing on behalf of the petitioner has submitted that when respondent No.2 has denied having received goods and not paid any payment, case is made out for the offences punishable under Section 406 read with Section 420 of the Indian Penal Code. It is further submitted by him that the concerned Investigating Officer has not even recorded the statements of the transporters at Ahmedabad who have delivered the goods and therefore, both the Court have committed an

error in accepting the 'C' Summary report. Therefore, it is requested to allow the present petition.

4. On the other hand Mr.K.T.Dave, learned APP appearing on behalf of the respondent - State has submitted that this petition is under Article 227 of the Constitution of India and considering the averments and allegation in the complaint and report submitted by the concerned Investigating Officer, it is found that dispute is purely of civil nature i.e. for recovery of amount for the alleged goods supplied and for which the petitioner has to file Civil Suit before the Competent Court. The learned Chief Judicial Magistrate, has rightly accepted 'C' Summary report submitted by the Investigating Officer and the learned Revisional Court has rightly confirmed the said order and rejected the Revision Application, therefore, it is requested to dismiss the present petition.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. On considering the complaint, it appears

that it is alleged and averred by the original complainant that certain goods were sold to respondent no.2 and part payment was made and full payment has not been made though goods have been purchased and received by respondent No.2. It appears that respondent No.2 has denied having received goods. Assuming that the contention on behalf of the petitioner might be true that goods have been actually received by respondent No.2 then also it is purely dispute with regard to recovery of amount for the goods sold and non-payment, it cannot be said that any offences are committed. This Court is not further expressing any opinion on merits with regard to the same as ultimately, it might effect either parties in a Suit that may be filed by the petitioner. Suffice it to say that both the Courts have not committed any error in accepting 'C' Summary report by accepting that the dispute involved is purely of civil nature. No case is made to interfere with the orders passed by the Courts below. Hence, this petition is dismissed.

[M.R.Shah, J.]

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